



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT KITUI**

**SUCCESSION CAUSE NO. 319 OF 2015**

**IN THE MATTER OF THE ESTATE OF GIBSON KINUKA NDUNDA (DECEASED)**

**JEDIDAH MATHEMBO NDUNDA.....PETITIONER/1<sup>ST</sup> ADMINISTRATOR**

**VERSUS**

**RAEL MUTUNGE.....OBJECTOR/2<sup>ND</sup> ADMINISTRATOR**

**R U L I N G**

1. Following an application for Confirmation of Grant herein, I made orders thus:

***“43. ....All children in the matter are now adults. The deceased’s Estate will be divided amongst them equally. Their mothers (Petitioner and Protester) will be added as units of each household. The first household consisting of Eight Members while the second household consists of Six (6) Members.*”**

***44. The acreage of each parcel of land having not been provided, the administratrix of the Estate is hereby directed to file a schedule of distribution of the Estate in tandem with the order of the court within 60 days for endorsement.....”***

2. The order of the Court dated the 16<sup>th</sup> day of **December, 2015** was disregarded by the Administratrix of the Estate.

3. On the 20<sup>th</sup> **April, 2016** the Objector/Protester filed an application pursuant to **Rule 49** and **73** of the **Probate and Administration Rules** seeking to be included as an Administrator of the Estate and that the Court to endorse the schedule of distribution that she had come up with. The application was opposed by the Administratrix/Petitioner who indicated that she had sought leave of the Court to appeal the decision to the Court of Appeal.

4. In the Ruling dated the 14<sup>th</sup> day of **February, 2017** I granted orders thus:

***“(i) The Applicant be and is hereby appointed as a Co-Administratrix of the Estate of the Respondent herein.***

***(ii) A fresh grant shall issue to include her name as such.***

***(iii) Each Administratrix shall file a list of beneficiaries, their entitlement and acreage of assets mentioned as forming the Estate of the Deceased for purposes of confirmation of the grant within 60 days.....”***

5. On the 16<sup>th</sup> day of **May, 2017**, the Objector/2<sup>nd</sup> Administratrix filed an affidavit where she deposed thus:

***“2. That pursuant to orders of the court issued on 14<sup>th</sup> February, 2017, I pray that the deceased’s Estate set out herein below be divided equally among the two (2) households, with each Administrator holding an equal share in all properties in trust for the beneficiaries.”***

6. She proceeded to list properties forming the Estate of the Deceased and beneficiaries from her household. Just as aforesaid this slightly deviated from the order of the Court. Granting the prayer sought will be tantamount to review of former orders of the Court. I also do note that a fresh grant of Letters of Administration is yet to be issued. In the premises I decline to issue the orders sought.

7. It is so ordered.

**Dated, Signed and Delivered at Kitui this 25<sup>th</sup> day of September, 2018.**

**L. N. MUTENDE**

**JUDGE**